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Private Law: Security Devices

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then, did not constitute a *breach* of contract, but, rather was the termination of a factually advantageous expectancy (but even this expectancy will receive protection against inducement if other factors strongly suggest that a privilege be denied).[19] As to (c), Wise bore no relation to the bank such as counsellor or stockholder that would support the propriety of his conduct. Finally, as to (d), Wise was prompted, not by ill will, but by the desire to protect his own financial interests in connection with an entirely collateral matter.

The purpose of the above digression is to suggest that the true problem in *Pack v. Wise* revolves naturally and plausibly around the considerations that determine when there has been an actionable inducement of breach of contract. The court's resort to the term "reasonableness" acquires a meaningful significance when it is referred to the balancing of factors under this tort. Since the tort of inducing breach of contract is not recognized in Louisiana, the court did the best it could with what was at hand. It may be feared, however, that its choice of the theories of privacy or insult as applied to the facts can prove unfortunate and may open a Pandora's box of troubles.

SECURITY DEVICES

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SURETYSHIP

In view of the great responsibility of personal sureties, one would expect them to be more careful and exact in stating the scope of their undertaking. Fortunately for them, the *stricti*

19. "[T]he overwhelming majority of the cases have held that interference with employments or other contracts terminable at will is actionable, since until it is terminated the contract is a subsisting relation, of value to the plaintiff, and presumably to continue in effect. The possibility of termination does, however, bear upon the issue of the damages sustained, and it must be taken into account in determining the defendant's privilege to interfere. So much more is allowed in the way of interference to further the defendant's own legitimate interests where the contract is subject to such termination, that contracts terminable at will might very well be placed in an intermediate classification of their own, half way between contracts for a definite term and the mere expectancy of prospective advantage. The courts, however, do not appear to have recognized them as a separate group; and to avoid too much repetition, it seems desirable to consider them with other contracts, with the recognition that they receive much more limited protection." PROSSER, TORTS 956-57 (3d ed. 1964).

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juris rule of interpretation operates for their protection.[1] In *Clayton Mark & Co. v. Waller*,[2] the surety stipulated "I will be personally responsible for any indebtedness of . . . up to $5,000.00." The plaintiff claimed this was a continuing guarantee, but the court concluded (after an examination of the evidence) that in the light of all the surrounding circumstances the parties intended only the then existing and undetermined indebtedness. This gave the surety the benefit of the ambiguity, and his ultimate responsibility was reduced by the amount of payments which had been made on the original debt.

Even a compensated commercial surety can not be held responsible in excess of its undertaking, but where the bond is one required by statute, it is not always clear just what is the scope of the liability which the surety must cover. In *Loewer v. Duplechin*,[3] the bond put up by the surety company for the defendant's bonded warehouse, in compliance with the requirements of R.S. 54:250, stipulated that "the Principal shall honestly conduct said business, faithfully perform all duties and obligations to all parties with said Principal *as a warehouseman.*" (Emphasis added.) Then, the defendant (the principal) accepted rice as the agent of a farmer for the purpose of selling it, but evidently he failed to account for the rice. The trial court rendered judgment against the surety on the basis that the defendant was operating as a warehouseman. On this point, the majority of the court of appeal reversed, maintaining that the defendant's actions were not as a warehouseman, because R.S. 54:58 defines a warehouseman as "a person lawfully engaged in the business of storing goods for profit." A strong dissenting opinion considered the operations as those of a warehouseman, both on technical grounds of statutory interpretation of the Louisiana law and on the basis of the general community understanding of the scope of a warehouseman's functions. To say the least, it must be a great disappointment to a farmer who turns over his rice to a "bonded warehouse" for sale when he is told by the court that he cannot recover on the bond because the defendant had not acted "as a warehouseman." The question involved is a closer one than might at first appear, and it is regrettable that

1. LA. CIVIL CODE art. 3039 (1870).
2. 158 So. 2d 224 (La. App. 1st Cir. 1963).
3. 161 So. 2d 124 (La. App. 3d Cir. 1964), *writ refused*, 246 La. 80, 163 So. 2d 358 (1964).

the Supreme Court's denial of a writ precluded further examination of the issue.

MORTGAGES

Coen v. Gobert[4] presented the unusual situation of a mortgage foreclosure seizure of a tract of land including a house which had been moved to another location. The house was originally on the mortgaged land and was clearly covered by the mortgage; if it had been removed without the knowledge or consent of the mortgagee and had continued more or less intact, the right of pursuit would follow the house to its new location. However, in the case under discussion, the court found that the removal of the house had been with the mortgagee's consent and that the mortgage coverage had been lost by the creditor's renunciation under Civil Code article 3411(5). In addition, the original old frame house had undergone so many changes in being made over into a modern brick veneer building that this portion of the thing mortgaged could be considered extinguished under article 3411(1).

The case of *Lamar Life Ins. Co. v. Babin*[5] has been through several trials, including a rehearing before the Supreme Court, and it has thus far produced more puzzling questions than satisfying answers. The creditor with a duly recorded conventional mortgage containing a homestead waiver claimed payment in preference to a prior-recorded judicial mortgage out of the amount which would have been reserved as the homestead of the judgment debtor if he had properly claimed it. As the case now stands, the Supreme Court has remanded it to determine whether the property was the debtor's bona fide homestead, without passing upon the court of appeal's holding that the benefit of the homestead exemption is personal to the homeowner.

In *Kinnebrew v. Tri-Con Prod. Corp.*,[6] the question at issue centered on the interpretation of Act 215 of 1910, now R.S. 9:5141, which provides that mortgages and privileges are effective against all persons from the time of filing, as distinguished from the actual inscription into the record books. Previous decisions of the courts of appeal had interpreted this stat-

4. 154 So. 2d 443 (La. App. 2d Cir. 1963).
5. 246 La. 19, 163 So. 2d 81 (1964); 148 So. 2d 366 (La. App. 1st Cir. 1962).
6. 244 La. 879, 154 So. 2d 433 (1963), *affirming* 147 So. 2d 21 (La. App. 2d Cir. 1962).

ute along with article XIX, section 19, of the 1921 Constitution, reaching the conclusion that actual recordation was required and if timely done gave an effective date as of the time of filing.[7] In the present *Kinnebrew* case, the court of appeal expressed disagreement with the requirement of actual inscription in addition to the filing, and the Supreme Court granted certiorari.

Upon careful examination of the facts, the Supreme Court concluded that this expression by the court of appeal was "gratuitously made, and not necessary for a determination of the litigation, inasmuch as the lien and mortgage sought to be enforced by these plaintiffs *were actually inscribed.*"[8] The actual inscription was made within three days of the filing and this delay was accounted for by the fact that the instrument was filed late on a Friday afternoon. Accordingly, the inscription on Monday was reasonably prompt, and its effectiveness was held to date from the filing on Friday — in accordance with the clear language of the statute, and affirming the decision of the court of appeal.

The really troublesome questions in the interpretation of the statute — if actual inscription does not take place, or is excessively delayed — did not have to be answered for the disposition of this case and the Supreme Court specifically pretermitted any expression of opinion.[9]

In *Rex Fin. Co. v. Cary*,[10] the Supreme Court held that a mortgage foreclosure was good because they found that the owner of the note had no notice of its defect and was therefore a "holder in due course" so that any existing equities between the immediate parties could not be urged against him. This left unanswered the question raised by the dictum in the court of appeal's opinion that the effective date of a collateral mortgage is not the date of recordation of the mortgage but the date of issuance of the current hand note which represents an existing indebtedness.[11] This point about collateral mortgages is more directly a part of the *ratio decidendi* in the more recent case of *Odom v. Cherokee Homes, Inc.*,[12] which will be discussed more fully in a later issue of this *Review*.

7. Opelousas Fin. Co. v. Reddell, 9 La. App. 720, 119 So. 770 (1929).
8. 244 La. at 884, 154 So. 2d at 435.
9. *Id.* at 894, 154 So. 2d at 438.
10. 244 La. 675, 154 So. 2d 360 (1963), *affirming* 145 So. 2d 672 (La. App. 4th Cir. 1962).
11. 145 So. 2d at 676.
12. 165 So. 2d 855 (La. App. 4th Cir. 1964), *writ refused*, ". . . no error of law," 167 So. 2d 677 (La. 1964), two Justices dissenting.

CHATTEL MORTGAGES

Morrison v. Faulk[13] presented the issue of a competition between a chattel mortgage and a lessor's privilege. There was no dispute about the fact that the lessor's privilege had attached to the effects in question prior to the chattel mortgage, which was recorded only after delivery of the objects (several cash registers). However, the holder of the chattel mortgage urged that the lessor's privilege had been extinguished when the claim for rent had been merged in a judgment. Generally, a cause of action is considered extinguished when merged in a judgment so that a new suit can not be instituted on the original cause of action; but when this judgment at the same time contains a recognition of the lessor's original privilege with priority over the inferior lien of the chattel mortgage, it is hardly in order for the holder of the latter to claim the extinguishment of the superior privilege. Nor does it make any difference that, in subsequent stages of the procedure, the lessor was the sheriff's-sale purchaser of the lessee's right of occupancy.

There is a dictum in this case that the Deficiency Judgment Act[14] "applies only in those instances where there has been a waiver of appraisement by the debtor, and the creditor takes advantage of such waiver . . . . The record leaves us with the impression that if there was no formal appraisement it was due solely to an oversight on the part of the sheriff's office."[15] In view of the strictness with which the *public policy* nature of this law is stressed in the statute[16] and in the decisions applying it,[17] the cited dictum may be encouraging an unduly loose and liberal interpretation of the Deficiency Judgment Act.

BUILDING CONSTRUCTION PRIVILEGES

In *Broadmoor Lumber Co. v. Liberto*,[18] the plaintiff supplied materials to a contractor who prefabricated some shelves or cabinets which he then installed in a grocery store. Presumably, the property owner paid the contractor, but the contractor did not pay the lumber company. The trial court rendered judg-

13. 158 So. 2d 837 (La. App. 4th Cir. 1963), *writ refused*, ". . . result is correct," 245 La. 643, 160 So. 2d 229 (1964).
14. LA. R.S. 13:4106 (1950).
15. 158 So. 2d at 840.
16. LA. R.S. 13:4107 (1950).
17. See Soileau v. Pitre, 79 So. 2d 628 (La. App. 1st Cir. 1955).
18. 162 So. 2d 801 (La. App. 4th Cir. 1964).

ment by default against the contractor, and there was no appeal. Insofar as the owner was concerned, the trial court rendered a judgment in personam against him for the amount claimed, together with recognition of a materialman's privilege against the property. The court of appeal made a careful examination of the facts surrounding the construction and installation of the shelves (or cabinets) and concluded that they were movables because they had not been "attached permanently" within the meaning of Civil Code article 469 to become immovable by destination.

Then the court held that "since the lien statute [R.S. 9:4812] is restricted to immovables and since the plaintiff has no recourse against the owner except by virtue of the lien statute, . . . plaintiff cannot recover for the materials . . . used in the construction of the cabinets."[19] This rationale is not clear. For the application of the statute, is it necessary that the work itself constitute an immovable, that the work be done on an immovable, or that the privilege operate only on immovable property? The two pertinent parts of the statutory text are "any person furnishing service or material or performing any labor on the said building or other work" and "a privilege upon the building or other structure and upon the land." Neither of these refer to the repair or installation work, but rather to the property on which the repair or installation was done and to the property on which the privilege is created. Accordingly, the movable or immovable classification of the shelves is irrelevant unless it can be said that their construction and installation did not constitute the furnishing of material or labor "on the said building" — in which event a different kind of rationale would be appropriate. The movable or immovable classification of the shelves themselves might then not be so important. Is the manufacturer of prefabricated cabinets who aims at greater simplicity in their installation progressing in the wrong direction for his own welfare?

The case of *Abry Brothers, Inc. v. Tillman* was decided by the court of appeal[20] prior to the Supreme Court decision in *Lumber Prod., Inc. v. Crochet*,[21] so that when the *Abry* case got to the Supreme Court,[22] the *Crochet* holding was directly ap-

19. *Id.* at 804.
20. 148 So. 2d 804 (La. App. 4th Cir. 1963).
21. 244 La. 1060, 156 So. 2d 438 (1963).
22. 245 La. 1017, 162 So. 2d 346 (1964).

plied. The issues of inscription and reinscription of the claim, as well as the prescription of the right in rem and the right in personam, have been discussed in prior issues of this *Review*.[23]

PRESCRIPTION

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ACQUISITIVE PRESCRIPTION

Lincoln Parish School Board v. Ruston College[1] presented the question (first impression) of whether a school board could acquire title to property by thirty-year prescription. In 1887, Robert Russ donated a tract of land to Ruston College, which used the property until it ceased functioning in 1895. Then there was a gap not explained in the evidence, following which the property was used as a public school site until the building burned in 1910. The school board then called a successful election to raise money for the construction of a new building, which became Ruston High School. The evidence establishes a continued uninterrupted possession of the property by the school board *as owner* from 1911.

The trial court held in favor of the school board, and the court of appeal affirmed. Several Louisiana and other civil law authorities are appropriately cited to show that a school board in Louisiana is a body corporate created by the state vested with express power to acquire and alienate property as well as the right to sue and be sued. The right to acquire land by prescription is necessarily included in this power properly vested in a properly created legal person; nor is there any prohibition to exclude such a right. The argument that a school board possesses only limited or restrictive powers is not apposite here because the question at issue is within the granted powers.

One of the policy reasons underlying the civil law institution of acquisitive prescription is to confirm the ownership of a

23. *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Security Devices*, 24 LA. L. REV. 205, 208-10 (1964); Note, 24 LA. L. REV. 943 (1964).

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1. 162 So. 2d 419 (La. App. 2d Cir. 1964), *writs denied*, 246 La. 355, 164 So. 2d 354 (1964).